

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 26

Introduced by Friend, 10.

Read first time January 8, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 14-557, 15-725, 15-733, 15-735, 15-821, 15-822,
3 16-708.01, 77-208, 77-209, 77-1322, and 77-1917.01,
4 Reissue Revised Statutes of Nebraska; to change priority
5 of special assessment liens; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 14-557, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 14-557 All general municipal taxes upon real estate shall
4 be a first lien upon the real estate upon which it is levied
5 and take priority over all other encumbrances and liens thereon.
6 All special assessments regularly levied shall be a perpetual lien
7 on the real estate assessed from the date of levy until paid
8 irrespective of the county in which such real estate is situated.
9 Such special assessment perpetual lien shall be in parity with
10 the tax lien of general, state, county, city, village, municipal,
11 or school taxes, and no sale of such property to enforce any
12 general, state, county, city, village, municipal, or school tax or
13 other liens shall extinguish the perpetual lien of such special
14 assessments. ~~7 but shall be subject to all general taxes.~~ The lien
15 of all general municipal taxes levied on personal and real property
16 shall be governed by the general revenue laws of this state.

17 Sec. 2. Section 15-725, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 15-725 Special tax assessments to pay cost of local
20 improvements, except special assessments for sidewalk purposes
21 or as herein otherwise provided, shall be made in the manner
22 following: (1) Assessment shall be made on the district by
23 resolution of the council at any meeting, stating cost of the
24 improvement and benefit accruing to the property in the district
25 to be taxed, which, with the vote by yeas and nays, shall be

1 recorded in the minutes. Therewith shall be submitted a proposed
2 distribution of the tax on each separate property to be taxed
3 subject to action of the board of equalization as prescribed
4 therein; and (2) notice of time of assessment shall be published
5 in some newspaper published and of general circulation in the city
6 ten days before the assessment, and that the council will sit
7 as a board of equalization to distribute the tax at a time in
8 such notice fixed, not less than five days after such assessment,
9 and the proper distribution of such special tax shall be open
10 to examination of all persons interested. Property shall not be
11 specially taxed for more than the total cost of the improvement nor
12 more than the special benefit accruing thereto by the improvement.
13 If the aggregate tax be less than the cost of improvement the
14 excess shall be paid from the general fund. Special taxes may be
15 assessed as the improvement progresses and as soon as completed in
16 front of or along property taxed, or when the whole is complete,
17 as the council shall determine. Special assessments for local
18 benefits shall be a lien on all property so specially benefited.
19 The special assessment lien shall be in parity with the tax lien of
20 general, state, county, city, village, municipal, or school taxes.
21 ~~superior and prior to all other liens save general taxes or other~~
22 ~~special assessments and equal therewith.~~ If any special assessment
23 be declared void, or doubt of its validity exist, the mayor and
24 council, to pay the cost of improvement, may make a reassessment
25 thereof on the original estate within the district, and any sums

1 paid on the original assessment shall be credited to the property
2 on which it was paid and any excess refunded to the owner paying
3 it, with lawful interest. Taxes reassessed and not paid shall be
4 enforced and collected as other special taxes. No special tax or
5 assessment which the mayor and council acquire jurisdiction to make
6 shall be void for any irregularity, defect, error, or informality
7 in procedure, in levy or equalization thereof.

8 Sec. 3. Section 15-733, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 15-733 In the event of the refusal or neglect of such
11 street railway companies to pave, repave, or repair, when so
12 directed by the mayor and the city council, upon the grading,
13 paving, or repaving of any street upon which their track is laid,
14 the mayor and council shall have power to pave, repave, or repair
15 the same; and the cost of such paving, repaving, or repairing may
16 be collected by levy and sale of any real or personal property
17 of said the street railway company, the same as special taxes
18 are collected. Special taxes for paying the cost of such paving,
19 repaving, macadamizing, or repairing of any street railway may
20 be levied upon the track, including the ties, iron, roadbed and
21 right-of-way, side tracks, and appurtenances, including buildings
22 and real estate belonging to such company or person, and used for
23 the purpose of such street railway business, all as one property,
24 or upon such part of such tracks, appurtenances, and property
25 as may be within the district paved, repaved, macadamized, or

1 repaired, or any part thereof, and shall be a lien upon the
2 property of such company in its entirety and as one property from
3 the time of the levy until satisfied. The lien so created shall
4 attach in like manner and with like effect to all property of
5 such company or companies after acquired which shall be used in
6 the operation of such railway. No mortgage, conveyance, pledge,
7 transfer, or encumbrance of any such property of any such company
8 shall be made or suffered, except subject to the actual or
9 prospective lien of such special taxes, whether actually levied or
10 not. Such special taxes when levied shall constitute a lien upon
11 the property of such railway in its entirety and as one property
12 prior and superior to all other liens or encumbrances. The lien
13 shall be in parity with the tax lien of general, state, county,
14 city, village, municipal, or school taxes. ~~7 except liens for~~
15 ~~taxes or for other special assessments.~~ The treasurer shall have
16 the power and authority to seize any personal property belonging
17 to any such person or company for the satisfaction of any such
18 special taxes when delinquent, and to sell the same upon the
19 same advertisement and in the same manner as constables are now
20 authorized to sell personal property upon execution at law, but
21 failure to do so shall in nowise affect or impair the lien of the
22 tax or any proceeding allowed by law for the enforcement thereof.
23 The railroad track or any other property upon which such special
24 taxes shall be levied, or so much thereof as may be necessary, may
25 be sold for the payment of such special taxes in the same manner

1 and with the same effect as real estate may be sold upon which
2 such special taxes may be levied. It shall also be competent for
3 any such city to bring civil action against any party owning or
4 operating any such street railway and liable to pay said taxes,
5 to recover the amount thereof, or any part thereof delinquent and
6 unpaid, in any court having jurisdiction of the amount, and obtain
7 judgment and have execution therefor, and no property, real or
8 personal, shall be exempt from any such execution. Real ~~÷ PROVIDED,~~
9 ~~real~~ estate shall not be levied upon by execution, except by
10 execution out of the district court, on a judgment therein or
11 transcript of a judgment filed therein, as provided by law. No
12 property seized by the treasurer, as hereinbefore provided, or upon
13 any such execution, shall be taken from the officer holding the
14 same upon any order of replevin. No defense shall be allowed in any
15 such civil action, except such as goes to the groundwork, equity,
16 and justice of the tax, and the burden of proof shall rest upon the
17 party assailing the tax. In case part of such special assessment
18 shall be shown to be invalid, unjust, or inequitable, judgment
19 shall be rendered for such amount as is just and equitable, and
20 costs shall follow the judgment. It shall be competent for the
21 mayor and council, upon the written application of any company,
22 association, corporation, or person owning any such street railway,
23 to provide that such special tax shall become delinquent and
24 payable in installments, as in case of taxes levied upon abutting
25 real estate as hereinbefore provided, but such application shall be

1 taken and deemed a waiver of any and all objections to such taxes
2 and to the validity thereof. Such application shall be made at or
3 before the final levy of such taxes. The provisions of this section
4 in regard to the levy, collection, and enforcement of special taxes
5 to pay the cost of paving, repaving, macadamizing, or repairing of
6 any such street railways shall apply to all such special taxes.

7 Sec. 4. Section 15-735, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 15-735 Special sidewalk assessments may be collected:

10 (1) In the manner usual for the collection or foreclosure
11 of county or state taxes against real estate;

12 (2) By foreclosure as in case of county or state taxes
13 against real estate. In ~~PROVIDED, HOWEVER, in~~ the foreclosure
14 of such special sidewalk assessments any number of parties, owners
15 of abutting property against which property a special sidewalk
16 assessment has been made may be made parties defendant, and any
17 number of special sidewalk assessments may be foreclosed in one
18 action, the decree, however, to be separate as to each particular
19 piece of abutting property against which such special sidewalk
20 assessments have been levied. A ~~AND PROVIDED FURTHER,~~ a certified
21 copy by the city clerk of the action of the council in making
22 such special sidewalk assessments shall be received in evidence as
23 prima facie evidence of the regularity of all proceedings in the
24 matter of making and levying such special sidewalk assessments,
25 and such special sidewalk assessments shall constitute a lien.

1 The lien shall be in parity with the tax lien of general, state,
2 county, city, village, municipal, or school taxes. In prior and
3 superior to all other liens except liens for taxes or other special
4 assessments upon such abutting property; AND PROVIDED FURTHER, in
5 the foreclosure of such special assessments, the action may be
6 brought in the name of the city against any and all parties subject
7 to the payment of such special sidewalk assessments in one or
8 more actions, and the city may become a purchaser thereof for an
9 amount not exceeding the amount of the special sidewalk assessment,
10 interest, and penalties thereon; or

11 (3) The city clerk, upon the request of the council,
12 shall, under seal of the city, make out a statement containing
13 a description of the property against which special sidewalk
14 assessments are delinquent, the amount of such special sidewalk
15 assessments, together with interest and penalties thereon, the name
16 of the owner of such abutting property at the time of the levy and
17 the date of the levy, and shall transmit the same to the clerk
18 of the district court; and upon request of the city the clerk of
19 the district court shall issue an order of sale of such abutting
20 property and deliver the same to the sheriff, who shall thereupon
21 cause such property to be advertised and sold as in case of sale
22 of real estate under judgment and execution. It, ~~except that it~~
23 shall not be necessary for the said sheriff to cause such property
24 to be appraised. Upon ~~upon~~ sale the sheriff shall report the sale
25 ~~thereof~~ to the district court for confirmation.

1 Sec. 5. Section 15-821, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 15-821 Special assessments on real estate shall be a lien
4 from the date of the levy, and interest on all unpaid installments
5 shall be payable annually. Such lien shall be perpetual. The lien
6 shall be in parity with the tax lien of general, state, county,
7 city, village, municipal, or school taxes. and superior to all
8 other liens upon the property except liens for taxes. In case of
9 sale of any property for such tax or special assessment the same
10 shall be governed by the general revenue law, except as herein
11 otherwise provided, and the rights and limitations shall be the
12 same as in other tax sales. Each ~~PROVIDED,~~ ~~each~~ installment
13 shall draw interest at a rate not to exceed the rate of interest
14 specified in section 45-104.01, as such rate may from time to time
15 be adjusted by the Legislature, payable annually, from levy until
16 due; and installments delinquent shall draw interest at the rate
17 specified in section 45-104.01, as such rate may from time to time
18 be adjusted by the Legislature, until paid.

19 Sec. 6. Section 15-822, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 15-822 The council shall have power in all cases where
22 special assessments for any purpose have or may be declared void or
23 invalid for want of jurisdiction in making or levying such special
24 assessments, or on account of any defect or irregularity in the
25 manner of levying the same, or for any cause whatever, to reassess

1 and relevy a new assessment equal to the special benefits or not
2 to exceed the cost of the improvement for which the assessment was
3 made upon the property originally assessed, and such assessment so
4 made shall constitute a lien upon the property. The lien shall
5 be in parity with the tax lien of general, state, county, city,
6 village, municipal, or school taxes. In prior and superior to all
7 other liens except liens for taxes or other special assessments,
8 PROVIDED, in all cases under the provisions of this section the
9 council, before making any such reassessment or relevy of special
10 taxes or assessments, shall give five days' notice in a newspaper
11 published and of general circulation in the city of the time when
12 the council will meet to determine the matter of reassessing or
13 relevying all such special assessments.

14 Sec. 7. Section 16-708.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 16-708.01 Whenever a city of the first class lawfully
17 reannexes territory which it had formerly annexed but which
18 annexation was illegal because the statutes under which such
19 original annexation was made were unconstitutional and void, (1)
20 all special assessments levied by such city of the first class
21 with respect to such territory shall be validated, binding, and
22 legal upon such city of the first class and the inhabitants of
23 such territory in the same manner as if the original annexation
24 had been lawful, (2) all zoning, special use permits, and contracts
25 for municipal services made or entered into with respect to such

1 territory by such city of the first class shall be validated,
2 binding, and legal upon such city of the first class and the
3 inhabitants of such territory in the same manner as if the original
4 annexation had been lawful, (3) any prior actions by any officials
5 of such city of the first class, including the election of council
6 members from such territory or a part thereof shall be validated,
7 binding, and legal upon such city of the first class and the
8 inhabitants of such territory in the same manner as if the original
9 annexation had been lawful, and (4) such city of the first class
10 shall have power to assess or reassess and levy or relevel new
11 assessments equal to the special benefits and not exceeding the
12 cost of improvements for which any assessment was originally made
13 upon such territory to be made in substantially the manner provided
14 for making original assessments of like nature and when so made,
15 shall constitute a lien upon the property. The lien shall be in
16 parity with the tax lien of general, state, county, city, village,
17 municipal, or school taxes. Taxes prior and superior to all other
18 liens except liens for other special assessments, and taxes or
19 special assessments so assessed or reassessed shall be enforced and
20 collected as other special taxes, and in making such assessment or
21 reassessment, the city council, sitting as a board of equalization
22 and assessment, shall take into consideration payments, if any,
23 made on behalf of the property reassessed under assessments made
24 prior to the reannexation.

25 Sec. 8. Section 77-208, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-208 The first lien upon real estate under section
3 77-203 shall take priority over all other encumbrances and liens
4 thereon except as provided in sections 14-557 and 77-1917.01.

5 Sec. 9. Section 77-209, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-209 ~~All~~ Except as otherwise provided in this section,
8 all special assessments, regularly assessed and levied as provided
9 by law, shall be a lien on the real estate on which assessed, and
10 shall take priority over all other encumbrances and liens thereon
11 except the first lien of general taxes under section 77-203. A
12 special assessment lien upon real estate within a city or village
13 shall be in parity with the tax lien of general, state, county,
14 city, village, municipal, or school taxes.

15 Sec. 10. Section 77-1322, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-1322 The governing body of all cities, including
18 cities which have adopted or which hereafter adopt a home rule
19 charter under and pursuant to Article XI, sections 2 to 5,
20 ~~inclusive,~~ of Article XI of the Constitution of ~~this state,~~
21 Nebraska, villages, public corporations, and political subdivisions
22 of the State of Nebraska, sitting as a board of equalization
23 and assessment, shall have power in all cases where special
24 assessments heretofore made or which may hereafter be made for
25 any purpose have been or may be declared void or invalid, for

1 want of adequate notice, to reassess and relevel a new assessment
 2 equal to the special benefits and not exceeding the cost of the
 3 improvement for which the assessment was made upon the property
 4 originally assessed. Such ~~and such~~ reassessment and relevel shall
 5 be made substantially in the manner provided for making original
 6 assessments of like nature, and when so made shall constitute a
 7 lien upon the property prior and superior to all other liens,
 8 except liens for taxes or other special assessments, except as
 9 provided in sections 14-557 and 77-1917.01, and taxes so reassessed
 10 shall be enforced and collected as other special taxes. In ~~and in~~
 11 making such reassessment the governing body, sitting as a
 12 board of equalization and assessment, shall take into consideration
 13 payments, if any, made on behalf of the property reassessed, under
 14 such prior void assessment. If ~~and if~~ such prior payments exceed
 15 the special assessment on the given property as finally determined,
 16 the excess, with lawful interest thereon, shall be refunded to the
 17 party paying the same.

18 Sec. 11. Section 77-1917.01, Reissue Revised Statutes of
 19 Nebraska, is amended to read:

20 77-1917.01 All ~~cities, villages and~~ sanitary and
 21 improvement districts in Nebraska shall have a lien upon real
 22 estate within their boundaries for all special assessments due
 23 thereon to the municipal corporation or district, which lien
 24 shall be inferior only to general taxes levied by the state and
 25 its political subdivisions. All cities and villages shall have

1 a lien upon real estate within their boundaries for all special
2 assessments due thereon to the city or village, and such special
3 assessment lien shall be in parity with the tax lien of general,
4 state, county, city, village, municipal, or school taxes. When
5 such special assessments have become delinquent, without the real
6 property against which they are assessed being first offered at tax
7 sale by the tax sale certificate method or otherwise, the municipal
8 corporation or district involved may itself as party plaintiff
9 proceed in the district court of the county in which the real
10 estate is situated to foreclose, in its own name, the lien for
11 such delinquent special assessments in the same manner and with
12 like effect as in the foreclosure of a real estate mortgage, except
13 as otherwise specifically provided by sections 77-1903 to 77-1917,
14 which shall govern when applicable. Final confirmation of sale in
15 such foreclosure proceeding and issuance of deed to the plaintiff,
16 or its assignee, cannot be had until two years have expired from
17 the date of the sale held by the sheriff, and, after expiration of
18 such two-year period, personal notice has been served on occupants
19 of the real property. The remedy granted in this section to cities,
20 villages, and sanitary and improvement districts for the collection
21 of delinquent special assessments shall be cumulative and in
22 addition to other existing methods.

23 Sec. 12. Original sections 14-557, 15-725, 15-733,
24 15-735, 15-821, 15-822, 16-708.01, 77-208, 77-209, 77-1322, and
25 77-1917.01, Reissue Revised Statutes of Nebraska, are repealed.